

OTA appeals hearing or proceeding. (Cal. Code Regs., tit. 18, § 30604(a)(1)-(6); *Appeal of Shanahan*, 2024-OTA-040P.)

Upon consideration of appellants' petition, OTA concludes that the reasons set forth in this petition do not constitute a basis for granting a new hearing. Appellants do not assert that any of the above grounds for rehearing are met or are applicable. Instead, appellants request "a reconsideration of the determination and a rehearing based on [their] position as taxpayers preparing [their] 2010 [California tax return] with reasonable cause and in good faith" and request that OTA "look at [their] case with fresh eyes." However, OTA can only grant a rehearing or "reconsider" the appeal where one of the above grounds for rehearing, as provided in California Code of Regulations, title 18, (Regulation) section 30604(a), is met.

By way of background, in 2010, appellants sold their one-third membership interest in an LLC taxed as a partnership to J. Galardi (another member in the LLC), in exchange for indemnification from liabilities the LLC owed pursuant to a loan made to the LLC by City National Bank (CNB). Appellants did not report any gain or loss from the sale of their membership interest in the LLC on their 2010 California return. In the Opinion, OTA affirmed FTB's determination that the amount realized on the sale of the LLC interest included the reduction in appellants' share of the LLC's liabilities – specifically appellants' share of the CNB loan to the LLC in the amount of \$3,408,333. In 2010, appellants also sold their one-third interest in a corporation to J. Galardi (another shareholder in the corporation), in exchange for forgiveness and cancellation of a loan appellant T. Utman owed to the corporation. Appellants again reported no gain or loss from the sale of their stock in the corporation. In the Opinion, OTA affirmed FTB's determination that the amount realized on the sale of the stock included the amount of the loan forgiven by the corporation in connection with the sale (approximately \$757,000).¹

The Opinion also considered appellants' argument that the accuracy-related penalty should be abated for reasonable cause. Specifically, appellants asserted that they could not afford to consult a tax advisor and that they exercised significant diligence and good faith when they prepared their 2010 California return. They asserted that they read the instructions for

¹ On their 2010 return, appellants instead treated this amount as cancellation of debt (COD) income based on a Form 1099-C, Cancellation of Debt, the corporation issued to appellant T. Utman. FTB reversed the COD income recognized by appellants on their 2010 return in the Notice of Proposed Assessment and Notice of Action it issued to appellants. This entirely offset appellants' unrecognized gain on the sale of the stock of \$428,486 (after consideration of appellants' basis in the corporation) and part of the unrecognized gain on the sale of their LLC interest. Thus, the accuracy-related penalty imposed by FTB, and at issue in this petition, relates entirely to the remaining unreported gain on the sale of appellants' LLC interest.


preparing individual returns and that they were unaware of the relevant partnership rules and relevant guidance such as IRS Publication 541, Partnerships. The Opinion noted that the most important factor in determining whether appellants acted with reasonable cause and in good faith is the extent of their efforts to ascertain their proper tax liability, citing Treasury Regulation section 1.6664-4(b)(1) and *Appeal of Steffier*, 2024-OTA-017P. The Opinion found that appellants failed to establish reasonable cause where they failed to provide any evidence of the specific steps they took to determine the correct amount of gain from the sale of their LLC interest, such as the research performed or the resources relied upon in concluding that they did not have any gain or loss from the sale.

Appellants do not contend that there is insufficient evidence to support this conclusion, this conclusion is contrary to law, or that this conclusion is otherwise invalid or improper. (See, e.g., Cal. Code Regs., tit. 18, § 30604(a)(4), (5).) Rather, the petition requests “reconsideration” with “fresh eyes” based on a new assertion in the petition that appellants relied on the professional advice of J. Galardi’s legal team at the time the sales transactions were negotiated. Specifically, the petition asserts that J. Galardi’s legal team “was extremely knowledgeable and highly educated” and that appellants were advised by this legal team that if they accepted J. Galardi’s offer, they would “be removed from any financial obligations, past, present, and future, including tax obligations, to both [CNB] and La Jolla Bank (or any other bank in the case of an acquisition or take-over) relating to [appellants] personally.” The petition further asserts that they were also advised that they “would have no financial responsibilities or obligations, past, present or future, including any tax obligations, relating to [their] personal position in [the LLC]” and that “[c]onsidering their level of expertise [appellants] accepted their statements.”


Appellants’ new argument, made for the first time in this petition, is not grounds for a new hearing. (See Cal. Code Regs., tit. 18, § 30604(a)(1)-(6).) Additionally, this new argument would require the submission of new evidence – specifically evidence of the precise advice appellants were given by J. Galardi’s legal team, the expertise of that legal team, and appellants’ knowledge and belief regarding their tax obligations at the time that advice was given and at the time appellants prepared their 2010 return. However, Regulation section 30604(a)(3) only permits a rehearing for newly discovered evidence, material to the appeal, which the filing party (here, appellants) could not have reasonably discovered and provided prior to the issuance of the Opinion. (See also *Appeal of Shanahan, supra.*) As noted in *Appeal of Wilson Development, Inc.* (94-SBE-007) 1994 WL 580654, at p. *2, the trier of fact “prefer[s] a record which contains all the evidence the parties believe is relevant. However, when the evidence could have been submitted before [the Opinion], but was not, the goal of


reaching the correct result must usually fall to the need to efficiently resolve matters” (See also *Appeal of Shanahan, supra.*) As such, if a party attempts to submit evidence after the Opinion has been issued, the party must show that the proffered evidence is material and could not have been produced prior to the issuance of the Opinion in order for OTA to grant the petition. (Cal. Code Regs., tit. 18, § 30604(a)(3); *Appeal of Wilson Development, Inc., supra*; *Appeal of Shanahan, supra.*)

Here, appellants offer no explanation or evidence as to why this argument, and the relevant evidence supporting this argument, could not have been provided in the original appeal and before the issuance of the Opinion. Thus, appellants have failed to establish that a rehearing is warranted pursuant to Regulation section 30604(a)(3) or that any of the other rehearing grounds in Regulation section 30604(a) have been met. Accordingly, appellants’ petition is denied.

DocuSigned by:

Cheryl L. Akin
Administrative Law Judge

We concur:

DocuSigned by:

Huy "Mike" Le
Administrative Law Judge

DocuSigned by:

Asaf Kletter
Administrative Law Judge

Date Issued: 7/16/2025